

48A C.J.S. Judges § 143

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

V. Discipline, Suspension, or Removal

E. Sanctions

§ 143. Factors; aggravating and mitigating circumstances

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  11(4)

When deciding what sanctions to impose on judges who violate codes of judicial conduct, courts may consider the existence of aggravating or mitigating circumstances.

The court will consider various factors in determining proper sanctions for judicial misconduct¹ including the length and character of a judge's public service; whether there is any prior case law on point; the magnitude of the offense and the harm suffered; whether the misconduct is an isolated incident or evidences a pattern of conduct; whether moral turpitude was involved; and the presence or absence of mitigating or aggravating circumstances.²

When deciding what sanctions to impose on judges who violate codes of judicial conduct, courts may consider the existence of aggravating or mitigating circumstances.³

Aggravating factors for determining whether a baseline sanction for judicial misconduct should be increased include prior disciplinary offenses, dishonest or selfish motive, a pattern of misconduct,

multiple offenses, bad faith obstruction of disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency, submission of false evidence, false statements, or other deceptive practices during the disciplinary process, refusal to acknowledge the wrongful nature of the conduct, vulnerability of the victim, substantial experience in the practice of law, and indifference to making restitution.⁴

Mitigating factors for determining whether a baseline sanction for judicial misconduct should be decreased include absence of a prior disciplinary record; absence of dishonest or selfish motive; personal or emotional problems; timely good faith effort to make restitution or to rectify the consequences of misconduct; full and free disclosure to a disciplinary board or cooperative attitude toward the proceedings; inexperience in the practice of law; character or reputation; physical or mental disability or impairment; delay in disciplinary proceedings, interim rehabilitation; imposition of other penalties or sanctions; remorse; and remoteness of prior offenses.⁵

The court must treat official conduct even more strictly than improprieties in a judge's private life because it goes to the very integrity of the judicial system; thus, absent significant mitigation, suspension, or removal is the only proper sanction for repeated and serious misconduct.⁶

CUMULATIVE SUPPLEMENT

Cases:

Factor examining whether judicial misconduct occurred in or out of courtroom and factor examining whether misconduct occurred in judge's official capacity or in her private life weighed in favor of serious discipline for judge who presided over grandparent visitation proceeding, based on judge's failure to follow proper procedures in finding non-party in contempt and issuing arrest warrant, which violated Code of Judicial Conduct and constituted willful misconduct in violation of state constitution; although judge's actions were not in open court, arrest warrant was issued in judge's official judicial capacity. [La. Const. art. 5, § 25\(C\)](#); La. Code of Jud. Conduct, Canons 2, 2(A), 3(A)(1). [In re Day, 352 So. 3d 50 \(La. 2022\)](#).

A 60-day suspension from judicial office without pay, in addition to a public reprimand, was warranted for municipal court judge's misconduct of calling two police officers to his courtroom and chastising them in open court about a matter from four days earlier relating to judge's private law practice; judge inappropriately used a courtroom and the prestige and authority of his judicial office to make persons with whom he had a disagreement unrelated to his judgeship stand before the judicial bench and be criticized and embarrassed publicly by the presiding judge, judge's conduct risked interference with official duties of the police, and judge's conduct evinced

deliberation and corrupt intent. Miss. Code of Jud. Conduct, Canons 1, 2, 3, 4. [Mississippi Commission on Judicial Performance v. Moore](#), 356 So. 3d 122 (Miss. 2023).

Six month suspension from the practice of law, with the suspension stayed in its entirety on conditions, for judge's misconduct in being disrespectful to a beneficiary in a pending estate case after the beneficiary commented publicly about judge's policy of permitting his daughter to practice law in his court was warranted, where judge, in aggravation, acted with a dishonest of selfish motive, engaged in a pattern of misconduct, and caused harm to a vulnerable victim, although judge did not have a prior disciplinary record. [Ohio Gov. Bar R. 5\(13\)\(B\)\(2\), \(3\), \(8\), \(C\)\(1\), \(4\), \(5\). Disciplinary Counsel v. O'Diam](#), 168 Ohio St. 3d 137, 2022-Ohio-1370, 196 N.E.3d 812 (2022).

[END OF SUPPLEMENT]

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Footnotes

- 1 Ark.—[Arkansas Judicial Discipline and Disability Com'n v. Proctor](#), 2010 Ark. 38, 360 S.W.3d 61 (2010).

Iowa—[In re Meldrum](#), 834 N.W.2d 650 (Iowa 2013).

La.—[In re Williams](#), 85 So. 3d 5 (La. 2012).

Me.—[In re Holmes](#), 2011 ME 119, 32 A.3d 1011 (Me. 2011).

Miss.—[Mississippi Com'n on Judicial Performance v. Boone](#), 60 So. 3d 172 (Miss. 2011).

Factors considered
(1) In determining the proper sanctions for judicial misconduct, the supreme court considers the duties violated, the injury caused, the judge's mental state, the existence of statutory aggravating and mitigating circumstances, and precedent.

Ohio—[Disciplinary Counsel v. Elum](#), 133 Ohio St. 3d 500, 2012-Ohio-4700, 979 N.E.2d 289 (2012).

(2) When imposing discipline on judges, the supreme court will consider whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

N.M.—[In re Salazar](#), 2013-NMSC-007, 299 P.3d 409 (N.M. 2013).
- 2 Ark.—[Arkansas Judicial Discipline and Disability Com'n v. Proctor](#), 2010 Ark. 38, 360 S.W.3d 61 (2010).

Iowa—[In re Meldrum](#), 834 N.W.2d 650 (Iowa 2013).

La.—[In re Williams](#), 85 So. 3d 5 (La. 2012).

Me.—[In re Holmes](#), 2011 ME 119, 32 A.3d 1011 (Me. 2011).

Miss.—[Mississippi Com'n on Judicial Performance v. Carver](#), 107 So. 3d 964 (Miss. 2013).
- 3 Miss.—[Mississippi Com'n on Judicial Performance v. Dearman](#), 73 So. 3d 1140 (Miss. 2011).

Ohio—Disciplinary Counsel v. Elum, 133 Ohio St. 3d 500, 2012-Ohio-4700, 979 N.E.2d 289 (2012).

4 Alaska—Inquiry Concerning a Judge, 822 P.2d 1333 (Alaska 1991).

Similar statements

Ohio—Disciplinary Counsel v. Plough, 126 Ohio St. 3d 167, 2010-Ohio-3298, 931 N.E.2d 575 (2010), reinstatement granted, 128 Ohio St. 3d 1203, 2011-Ohio-1082, 943 N.E.2d 568 (2011).

5 Alaska—Inquiry Concerning a Judge, 822 P.2d 1333 (Alaska 1991).

Other factors

Ohio—Disciplinary Counsel v. Russo, 124 Ohio St. 3d 437, 2010-Ohio-605, 923 N.E.2d 144 (2010).

6 Ariz.—In re Carpenter, 199 Ariz. 246, 17 P.3d 91 (2001).

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